STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUES QUANTEZ HEATH,

APPELLANT

APPELLATE CASE NO. 2024-001405

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in giving in impermissible charge on the facts on the credibility of witnesses, telling the jury to excuse "simple mistake[s]" the witnesses made?

STATEMENT OF THE CASE

Appellant was indicted in York County for murder, two counts of attempted murder, ABHAN, three counts of kidnapping, and associated weapons charges. On August 12, 2024, a jury was selected before the Honorable Daniel D. Hall. R. ___ (Aug. 12 Tr.) On August 15, 2025, appellant was tried before the Honorable William A. McKinnon and a jury. R. 1. Daniel K. Porter and Christopher Epting represented the State. R. 2. Bryson J. Barrowclough and Fred C. Davis represented appellant. R. 2. The jury convicted appellant of all charges except ABHAN, on which the jury convicted appellant of the lesser-included offense of first-degree assault and battery. R. 815-17. Judge McKinnon sentenced appellant to life imprisonment, consecutive to all other sentences, thirty years' imprisonment for both attempted murders, both consecutive, thirty years' imprisonment for the two kidnapping convictions unrelated to the murder charge, concurrent, ten years' imprisonment for first-degree assault and battery, concurrent, and five-year terms of imprisonment, concurrent, on the weapons charges. R. 828-29. This appeal follows.

STANDARD OF REVIEW

The question of whether a jury charge is an improper charge on the facts is a question of law and should be reviewed *de novo*. Reversal is required if the trial court abused its discretion and the charge as a whole remains prejudicial to the defendant. State v. Brown, 438 S.C. 146, 881 S.E.2d 771 (Ct. App. 2022).

ARGUMENT

The trial court erred in giving in impermissible charge on the facts on the credibility of witnesses, telling the jury to excuse "simple mistake[s]" the witnesses made.

Appellant testified in his own defense regarding the incidents that occurred on February 12, 2019. Appellant was a musician and his initially professional relationship with Bethany Farrar, a singer, became romantic. R. 624-30. But appellant began noticing items missing from his house whenever Farrar was present. R. 631-32.

Appellant also had a relationship with a woman named Shae Williams. R. 632. He described Williams as someone who never asked him for anything and said they had a good relationship. R. 632. Williams and Farrar were both at Appellant's house on Leach Road on the morning of February 12. R. 636.

Appellant spent the night on the couch and eventually moved to his bedroom. R. 635-36. Williams and Farrar were in his bedroom talking. R. 636-37. Appellant asked them to leave so he could get ready to take a shower. R. 637. He removed his jewelry and set it on his dresser. R. 637. When he got to the bathroom, Williams and Farrar were in there talking and using the phone. R. 637. Appellant thought it suspicious that Farrar was texting appellant's cousin, Elijah James, when James was just down the hall in the next room. R. 637. Appellant asked Farrar to leave and then briefly talked to Williams in the bathroom. R. 637-38.

When he finished talking to Williams, appellant went back to his bedroom. R. 638. He noticed his jewelry and other items were missing from his dresser. R. 638. He searched his car and then his room again and noticed some money was also missing. R. 638-39. Appellant went to the living room to confront the people in his house about his missing property. R. 639.

Seven people were in the living room. R. 639. Appellant asked about his property. R.

640. Appellant then told them he wanted to pat them down and then they had to leave his house. R. 640. Appellant got a hammer to defend himself. R. 640-41. He first went to pat down his uncle, Herman Leach. R. 641. Appellant knew Leach to carry a knife and he told Leach to take his hands out of his pockets. R. 641-42. When Leach refused, appellant hit him on the arm with the hammer. R. 642. Appellant did not intend to seriously hurt Leach. R. 642. Leach testified that the blow instantly broke his arm and he fell. R. 78-79. Leach then went to a back room, jumped out a window, and ran. R. 79.

Appellant said that Leach jumping out of a window "messed my mind up." R. 642-43. When he came back down the hall, he saw Elijah James with appellant's shotgun firing at Leach outside. R. 643. Appellant went outside and "snatched the gun out of his hands." R. 644. Appellant went back inside with the shotgun. R. 644.

Appellant confronted Farrar about his missing items. R. 644-45. Williams stepped in front of Farrar and put her hand on the gun to push it down. R. 645. Appellant stepped back, and when he did, the gun went off. R. 645-46. Appellant never meant to shoot Williams. R. 646. Williams died from shotgun's firing. R. 95. The trial judge charged the jury on the lesser-included offense of involuntary manslaughter for Williams' death. R. 730-31.

Appellant was not thinking clearly after Williams was shot and guessed he accidentally shot Farrar. R. 647-48. Both Williams and Farrar were shot with birdshot. R.133. Appellant had far more lethal buckshot rounds in his pockets, but did not load them into the shotgun. R. 574-75. R. 648-49. He had no intention of killing Farrar. R. 648.

Appellant left his house on Leach Road and went to his friend, Laquata Wilson's house on Farlow Street. R. 649. Wilson had helped appellant with situations in the past and he hoped to talk to her and get her help. R. 649-50. Wilson eventually came to the door and asked him if

he had something they could smoke. R. 650. Appellant went back to his car and saw a neighbor drive past. R. 650. Appellant did not want to leave a shotgun unattended in the car, so he took it and went into the house. R. 650-51.

Appellant and Wilson sat on her couch. R. 651. A few minutes later, "a guy came out of the back room with a gun." R. 651. The man pointed the gun at appellant. R. 691. Appellant started shooting as he tried to escape. R. 652-53. He drove away and was eventually apprehended in Charlotte. R. 653. The Charlotte police recovered appellant's shotgun from his car after he was arrested. R. 338.

Wilson admitted that the man at her house, Dmitri McCullough, usually carried a gun and had a gun that day. R. 226. She heard McCullough walk out and say, "What the f**k?" R. 210. Wilson looked back at appellant and saw the shotgun. R. 210. When she turned to look back at McCullough, he was gone. R. 210. Wilson said she raised her hands and appellant shot her twice. R. 211. She was shot in her side and lost vision permanently in one eye. R. 218. The police caught McCullough at an auto parts store and he had a loaded silver revolver. R. 283-84. The State did not call McCullough to testify.

Judge McKinnon gave the following jury charge on witness credibility:

> Believability of witnesses. When I say that you must consider all the evidence, I do not mean you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say and how important their testimony was. In making those decisions, you may believe or disbelieve any witness in whole or in part. The number of witnesses testifying about a particular point doesn't necessarily matter. To decide whether to believe a witness, I would suggest you ask yourself a few questions: Did the witness impress you as someone who was telling the truth; did they have any particular reason to not tell the truth, or have a personal interest in the case's outcome; did they seem to have a good memory; did they have the opportunity and ability to accurately observe the things they're testifying about; did they appear to understand the questions clearly and answer them directly; did the witness's testimony differ from other testimony or other evidence? *However, please keep*

> *in mind that a simple mistake by a witness doesn't necessarily mean the witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So if a witness misstated something, you must decide whether this was because of an innocent lapse in memory or intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.*

R. 726-27 (emphasis added). The italicized portion of this charge is improper and is an impermissible charge on the facts.[1] "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. Art. V, § 21. In State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), the Supreme Court eliminated the charge that a victim's testimony in a sexual assault case need not be corroborated. Id. at 498-500, 787 S.E.2d at 482-83. The Court found that charge violated Article 21's prohibition on courts commenting on the facts to the jury. Id. "By addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury." Id. "The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." Id.

Our Supreme Court has recently emphasized the importance of not "elevating facts" in jury charges. See State v. Brown, 438 S.C. 146, 151, 881 S.E.2d 771, 774 (Ct. App. 2022) (noting trend in cases). "Recent precedent has directed circuit courts to refrain from giving instructions that guide juries on the inferences they can draw from evidence or that tells the jury to consider particular evidence and how to construe it." Id.

Brown cites the recent cases paring down jury charges and leaving comments and inferences to lawyers in argument. Id. In State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), the Court eliminated the charge that malice can be inferred from a deadly weapon. The

[1] Given the number of consecutive sentences imposed on appellant, this Court should relax its error preservation rules and consider the propriety of this charge.

Burdette Court frowned on giving juries "examples of conduct the jury may consider when determining whether the State has proven an element of a crime or when determining whether certain other facts have been proven or disproven." Burdette at 502, 832 S.E.2d at 582. The "simple mistakes" language in Judge McKinnon's charge is an impermissible example of a witness's conduct. Burdette cited with approval cases eliminating the charge that a defendant's flight is evidence of guilt, the refusal to charge specific examples of legal provocation, and eliminating a charge on inferences a jury can draw from a defendant's actual knowledge of the presence of a drug. Id. citing State v. Grant, 275 S.C. 404, 272 S.E.2d 169 (1980) (flight); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000) (legal provocation); State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013) (drug knowledge). See also Pantovich v. State, 427 S.C. 555, 832 S.E.2d 596 (2019) (restricting use of good character charge).

"Because the trial judge is the authority figure in the courtroom, jurors look to the trial judge for guidance not only on the law, but for matters such as courtroom conduct and protocol, even permission for breaks, meals, and telephone calls." State v. Taylor, 427 S.C. 208, 215-16, 829 S.E.2d 723, 727 (Ct. App. 2019). Taylor, an Allen[2] charge case, emphasizes that jurors "scrutinize the trial judge's statements and instructions" and that this scrutiny elevates during deliberations. Id.

The State's case against appellant largely depended upon eyewitness testimony. Appellant's testimony showed he lacked the requisite specific intent for attempted murder and murder. Had the trial judge not given this charge, the jury likely would not have given the State's witnesses a pass for any "simple mistakes" they made in their testimony or in their statements to the police. This Court should reverse and remand for a new trial.

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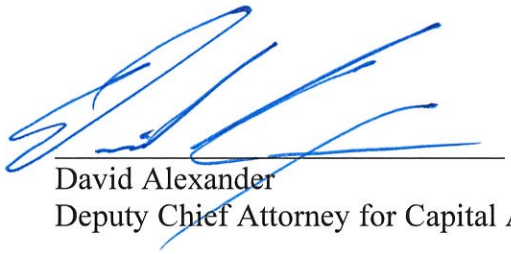
[2] Allen v. United States, 164 U.S. 492 (1896).

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

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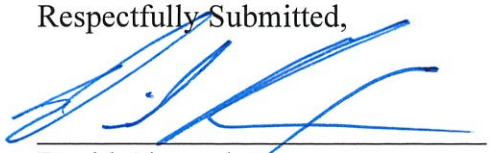
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marques Q. Heath states:

1. He is Deputy Chief Attorney For Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William A. Mckinnon, which was held on August 12, 15-16, 19-20, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Marques Q. Heath.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s):
(2) Trial transcript;
(3) Transcript of jury selection Aug. 12, 2024;
(4) State's Ex. 5, 9 (to be transported)

I certify that this designation contains no matter which is irrelevant to this appeal.

David Alexander
Deputy Chief Attorney For Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

David Alexander
Deputy Chief Attorney For Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Marques Q. Heath, #304128, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 7th day of July, 2025.

David Alexander
Deputy Chief Attorney For Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT